

General Information Letter: Application of 5 U.S.C. § 5517(a)(1).

February 8, 1999

Dear:

This is in response to your letter postmarked April 28, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

This letter serves as my "election" NOT to have my employer withhold any percentage of wages from my payroll pursuant to Title 5 United States Code, Section 5517(a)(1), Withholding of State Income Taxes:

(a) When a State Statute-

(1) provides for the collection of a tax either by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State, or by granting to employers generally the authority to withhold sums from the pay of employees if any employee voluntarily elects to have such sums withheld; and . . . (emphasis added).

If you have any questions, please feel free to contact me. But I expect you to honor my State Withholding Certificate as I filed it. The company has no authority to change or alter any federal forms which I sign under penalty of perjury. If the Illinois Department of Revenue disagrees, they may attempt to secure a court order directing this company to amend my certificate.

Response

The section of the United States Code that you have included in your letter does not give you any election to forego withholding of Illinois income tax from your wages. That section permits pay administrators for agencies of the federal government to comply with state tax withholding requirements. On the contrary, you should be aware of the penalties imposed under Illinois law for not complying with the tax law of the state.

Your employer is required by Illinois Income Tax Act, Section 701 to withhold from your wages amounts equal to the state tax on income less valid exemptions permitted by Section 702 of the act. Such withholdings are to be applied against your Illinois income tax liability, as shown on a correctly completed return for the tax year in question. The proper amount is considered a tax on your employer for purposes of the Uniform Penalty and Interest Act. The employer could therefore become liable for penalties as high as 20 per cent of the deficiency, plus interest.

Section 804 of the Illinois Income Tax Act requires that an individual taxpayer must remit to the Department of Revenue more than 90 per cent of the tax eventually owed for the tax year through either withholding or estimated tax payments. The taxpayer's failure to do so also brings into play the provisions

of the Uniform Penalty and Interest Act, which sets penalties as high as 20 per cent of the deficiency plus interest.

The Department believes that you should be advised of these potential consequences, given the general tenor of your letter.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney—Income Tax